Circuit Court for Baltimore City
Case No. 120182044

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1953

September Term, 2022

DENORRIS EVANS

v.

STATE OF MARYLAND

Reed,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: January 16, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Denorris Evans ("Evans") entered a conditional guilty plea in the Circuit Court for Baltimore City to possession of a regulated firearm by a disqualified person. He reserved the right to file an appeal to the denial of his motion to suppress. On appeal, he presents two questions for our review:

> I. Did the circuit court err in denying appellant's motion to suppress evidence where there was reasonable articulable suspicion that he was armed but not reasonable articulable suspicion that he was dangerous, rendering the stop and frisk illegal?

For the following reasons, we answer this question in the affirmative and reverse the judgment of the circuit court.

FACTUAL & PROCEDURAL BACKGROUND

On May 13, 2020, at approximately 4:00 p.m., Officer Corey Meiler[1] ("Ofc. Meiler") was on patrol in the area of 3131 West North Avenue in Baltimore City when he observed Evans. Ofc. Meiler was dispatched to patrol that area on foot because it was reported to have "heavy drug sales" in the area and previous instances of violence. Ofc. Meiler saw a man walk by him and "pull his pants up and after pulling his pants up, he took his right hand, grabbed a handle of which [sic] appeared to be a firearm through the hoodie and adjusted it on his back right side." Ofc. Meiler testified that he saw "what I believed to be a handle of a firearm protruding" and explained that the handle "looked like a square shape of a firearm handle." He stated that he activated his body-worn camera after he observed Evans adjust the firearm. Although not visible on the camera footage, the

[1] At the time of this incident in 2020, Ofc. Meiler had been an officer with the Baltimore City Police Department for approximately seven years.

officer testified that he observed Evans adjust the firearm in front of an orange brick storefront, which was approximately two buildings away or about "30 feet."

After making this observation, Ofc. Meiler called for backup and started to follow Evans on foot. Specifically, Ofc. Meiler stated to the dispatcher: "[c]an I get another unit at the 1800 block of Bloomingdale. Gentleman, characteristic of an armed person." Ofc. Meiler testified that the purpose of calling this information in was "letting them know, other officers responding to the area that I believe this gentleman would be armed, to use caution as well as when we're stopping this individual." While still following Evans, Ofc. Meiler saw two patrol cars pulling up and said over the police radio "[r]ight here on the left. This gentleman right here in the gray hoodie."

According to Ofc. Meiler, Evans appeared to "change[] direction of travel because he saw the patrol car stop in the middle of the block." Ofc. Meiler testified that Evans tried to "elude police presence." This movement increased Ofc. Meiler's suspicions that Evans was armed. The officer testified that he "grabb[ed] him and . . . stopped[ed] him from running" but the video depicts Ofc. Meiler forcefully grabbing Evans and throwing him to the ground. While on the ground, Evans told officers that "[i]t's in/on my back." Police recovered a firearm on the ground around where Ofc. Meiler first grabbed Evans.[2] Following this incident, Evans was placed under arrest.

The State filed an indictment in the Circuit Court for Baltimore City on June 30, 2020. On June 30, 2021, Evans filed a Motion to Compel, Dismiss, Exclude, or Impose

[2] The firearm was later found to be a "Taurus 9-millimeter semiautomatic handgun with a three and one quarter inch barrel length."

Additional Sanctions seeking to review the internal affairs files for Ofc. Meiler. On July 8, 2021, the circuit court held a hearing on the motion. The court ruled that one IAD file was discoverable and ordered that it be made available for the defense to review.

On January 6, 2023, the court held a hearing on Evans' Motion to Suppress Physical Evidence. Evans sought to suppress the recovered firearm with the magazine and ammunition and his statement. Evans argued before the suppression court that Ofc. Meiler seized him without probable cause. Specifically, Evans argued that he did not flee from the officer before he was taken to the ground. According to the defense's conception of the body-worn camera footage, Evans stepped towards the police cruiser, did not change his pace, and was not aware that an officer was behind him. The suppression court denied the motion from the bench and stated:

> After having listened to the evidence, I found the officer to be entirely credible and he was assigned to the Eastern District in an area where they had some gun violence. He was watching for guns. The Defendant walked past him. He pulled up his pants and while pulling up your pants may be consistent with innocence, articulable suspicion doesn't preclude innocent conduct. Articulable suspicion is just a common sense non-technical concept that depends on practical aspects of day to day life such as the court may give due deference to a law enforcement officer's experience and specialized training which enabled that law enforcement to make inferences that might elude a civilian is what the Court of Appeals has said in Norman v. State. And in this case, I find that the officer with the pulling up of the pants, in addition he observed what he believed to be a handgun. He's an officer for ten years on the force. He's around a lot of handguns. He knows what a handgun based on his training in both the Academy and on the street, I find that he did have reasonable suspicion to believe that the Defendant had a handgun and was qualified to make a Terry stop. So I will deny your motion.

The suppression court continued:

> [The officer] had a reasonable articulable suspicion to stop him under Terry and to frisk him. The officer thought he was running off which he may or

> may not have been. But the frisk was precluded because the gun flew off of the Defendant. So that, that's the end of the discussion. Okay. I don't think Part[ee] applies…And as to the statement, I think it's an excited utterance and therefore I'll deny your motion with regard to the statement.

Shortly thereafter, on January 9, 2023, Evans pled guilty to possession of a regulated firearm by a disqualified person in violation of Public Safety Article, § 5-133(c). Evans entered a conditional guilty plea to preserve the right to appeal the court's decision to deny his motion to suppress. The circuit court sentenced Evans to a term of five years without the possibility of parole. Evans timely filed his Notice of Appeal on January 12, 2023.

STANDARD OF REVIEW

In *Bowling v. State*, 227 Md. App. 460, 466-67 (2016), we set forth the proper standard of review for a motion to suppress:

> We review a denial of a motion to suppress evidence seized pursuant to a warrantless search based on the record of the suppression hearing, not the subsequent trial. We consider the evidence in the light most favorable to the prevailing party, here, the State. We also accept the suppression court's first-level factual findings unless clearly erroneous, and give due regard to the court's opportunity to assess the credibility of witnesses. We exercise plenary review of the suppression court's conclusions of law, and make our own constitutional appraisal as to whether an action taken was proper, by reviewing the law and applying it to the facts of the case.

(citations and quotations omitted). We review the court's legal conclusions de novo, however, making our own independent constitutional evaluation as to whether the officers' encounter with appellant was lawful. *Daniels v. State*, 172 Md. App. 75, 87 (2006) (citations omitted); *accord Fair v. State*, 198 Md. App. 1, 8 (2011).

DISCUSSION

I. Reasonable Suspicion

A. Parties Contentions

Evans argues that the suppression court erred when it denied his motion to suppress evidence because "the stop and frisk violated the Fourth Amendment to the United States Constitution." Specifically, Evans contends that "there was no reasonable articulable suspicion that crime was afoot and no reasonable articulable suspicion that appellant was dangerous—requirements of a lawful *Terry* stop and *Terry* frisk." Evans posits that we can reach this argument as a supplement to defense counsel's argument below or through exercising plain error review.

In response, the State argues that this argument is unpreserved on appeal because the issue of reasonable articulable suspicion that Evans was dangerous is a distinct argument from the one made below and this case is not proper for plain error review. The State contends in the alternative, that if we do reach the argument, the suppression court implicitly found that Evans was armed and dangerous. Furthermore, the record supported the circuit court's conclusion that a stop and frisk were justified.

B. Analysis

i. Legal Background

The Fourth Amendment and Article 26

The Fourth Amendment of the United States Constitution guarantees "[t]he right of the people to be secure in their persons, house, paper, and effects, against unreasonable searches and seizures[.]" U.S. CONT. amend. IV. The Fourth Amendment's proscription against unreasonable searches and seizures has been applied to the states through the Fourteenth Amendment and is separately enshrined in Article 26 of Maryland's

Declaration of Rights. *Mapp v. Ohio*, 367 U.S. 643, 655-57 (1961), *see also* Md. Const., Decl. of Rts. Art. 26. The Supreme Court of the United States has consistently articulated that "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Riley v. California*, 573 U.S. 373, 381 (2014) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)).

The exclusionary rule makes evidence inadmissible when it is obtained in violation of the Fourth Amendment. *Thornton v. State*, 465 Md. 122, 140 (2019). The sole purpose of the exclusionary rule is "to deter future Fourth Amendment violations." *Davis v. United States*, 564 U.S. 229, 236-67 (2011). However, various exceptions to the exclusionary rule may apply in any given case. *Richardson v. State*, 481 Md. 423, 446 (2022) (citing to *United States v. Leon*, 468 U.S 897 (1984) (applying the good faith exception to the exclusionary rule)).

As a general principle, warrantless searches and seizures are presumptively unreasonable and violate the Fourth Amendment. *Katz v. United States*, 389 US. 347, 357 (1967). "When police have obtained evidence through a warrantless search or seizure, the State bears the burden to demonstrate that the search or seizure was reasonable, by establishing the applicability of one of the 'few specifically established and well-delineated exceptions' to the warrant requirement." *State v. Carter*, 472 Md. 36, 55 (2021) (quoting *Grant v. State*, 449 Md. 1, 16 (2016). The United States Supreme Court has delineated

various exceptions to the warrant requirement.[3] *Thornton*, 435 Md. at 141 (citing to seminal Supreme Court cases discussing exceptions to the warrant requirement).

Terry Stops and Frisks

One clear exception to the warrant requirement is an investigatory stop and frisk. *Terry v. Ohio*, 392 U.S. 1, 17 (1968). The United States Supreme Court has recognized that a police officer "may conduct a brief investigative 'stop' of an individual if the officer has a reasonable suspicion that criminal activity is afoot." *Terry*, 392 U.S. at 17.

Law enforcement may then "conduct a reasonable search for weapons for the protection of the police officer, where [the officer] has reason to believe that [the officer] is dealing with an armed and dangerous individual, regardless of whether he [or she] has probable cause to arrest the individual for a crime." *In re D.D.*, 479 Md. 206, 223-24 (2022) (quoting *In re David S.*, 367 Md. 523, 533 (2002)). A legitimate *Terry* stop is required before an officer may conduct a *Terry* frisk. *Ames v. State*, 231 Md. App. 662, 676 (2017) ("A *Terry* stop is an indispensable prerequisite to a *Terry* frisk. It is also true, moreover, that the required antecedent *Terry* stop be a Constitutionally reasonable stop, and not a mere flawed attempt at one.")

[3] Notable exceptions to the warrant requirement include:

1) search incident to an arrest (*Arizona v. Gant*, 556 U.S. 332 (2009));
2) hot pursuit (*Warden v. Hayden*, 387 U.S. 294 (1967));
3) the plain view doctrine (*Horton v. California*, 496 U.S. 128 (1990));
4) the *Carroll* doctrine (*Carroll v. United States*, 267 U.S. 132 (1925));
5) stop and frisk (*Terry v. Ohio*, 392 U.S. 1 (1968));
6) consent (*Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)); and
7) exigent circumstances (*Kentucky v. King*, 563 U.S. 452 (2011)).

Thornton, 465 Md. at 141 n. 12 (citing *Grant v. State*, 449 Md. 1, 16 n.3 (2016)).

The Supreme Court of Maryland has clarified that "[r]easonable suspicion exists somewhere between unparticularized suspicions and probable cause." *Sizer v. State*, 456 Md. 350, 364 (2017). "[M]ere hunches are insufficient to justify an investigatory stop; for such an intrusion, an officer must have reasonable articulable suspicion." *Stokes v. State*, 362 Md. 407, 415 (2001). "While there is no litmus test to define the 'reasonable suspicion' standard, it has been defined as nothing more than 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Id.* (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981). Reasonable suspicion means "a particularized and objective basis for suspecting the particular person stopped of breaking the law." *Heien v. North Carolina*, 574 U.S. 54, 60 (2014).

Furthermore, "the level of suspicion necessary to constitute reasonable, articulable suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence and obviously less demanding than that for probable cause." *Graham v. State*, 325 Md. 398, 408 (1992) (internal quotation marks and citations omitted).

Reasonable suspicion is a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Bost v. State*, 406 Md. 341, 356 (2008) (quoting *Stokes v. State*, 362 Md. 407, 415 (2001)). The reasonable suspicion standard "does not allow [a] law enforcement official to simply assert that innocent conduct was suspicious to him or her." *Crosby v. State*, 408 Md. 490, 508 (2009) (internal citations omitted). "Rather, the officer must explain how the observed conduct, when viewed in the context of all of the other circumstances known to the officer, was indicative of criminal activity." *Id.* As we stated, a reviewing court must "examine the

totality of the circumstances to determine whether an officer could reasonably suspect that criminal activity is afoot." *State v. Holt*, 206 Md. App. 539, 558 (2012), *aff'd*, 435 Md. 443 (2013).

ii. Preservation of Issues

First, we will address the State's preliminary argument that Evans has not preserved this issue on appeal. Md. Rule 8-131 states:

> Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such as issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

In this case, the suppression court denied the motion to suppress and concluded that Ofc. Meiler did have reasonable articulable suspicion for the stop. As the suppression court said in its oral ruling, "I find that he did have reasonable suspicion to believe that [Evans] had a handgun and was qualified to make a Terry stop." The court continued, "[H]e had a reasonable articulable suspicion to stop him under Terry and to frisk him. The officer thought he was running off which he may or may not have been." Pursuant to Rule 8-131, this issue was decided by the trial court and is ripe for our review. The motions court presented its analysis of the case as a *Terry* stop when it denied Evans' motion. The suppression court decided that there was reasonable articulable suspicion justifying a *Terry* stop, so review of this finding is appropriate.

Further, the trial judge ruled that the officers justifiably frisked Appellant under *Terry*. This implicitly is a finding that Appellant was dangerous because he had a weapon.

Therefore, we also conclude that the issue of a finding of dangerousness has been preserved for appeal.

iii. *Terry* Stop

Appellant's brief asserts that "there was no reasonable articulable suspicion that a crime was afoot," thus failing to meet the "requirements of a lawful *Terry* stop…" However, Appellant does not elaborate or advance that argument, instead spending a majority of the brief challenging the subsequent *Terry* frisk.

Nonetheless, a lawful *Terry* stop is a necessary antecedent to a lawful *Terry* frisk. *Ames v. State*, 231 Md. App. 662, 676 (2017). Therefore, before reaching the issue of whether the *Terry* frisk of the Appellant was justified, we first must confirm that the preceding *Terry* stop was lawful.

Again, this requires that we "examine the totality of the circumstances to determine whether an officer could reasonably suspect that criminal activity is afoot." *State v. Holt*, 206 Md. App. 539, 558 (2012), *aff'd*, 435 Md. 443 (2013).

Evidence that Appellant was Carrying a Concealed Handgun

The Fourth Circuit has made clear that in States where carrying a handgun is authorized by law, carrying a handgun does not, on its own, establish reasonable suspicion necessary for a *Terry* stop. *United States v. Black*, 707 F.3d 531 (4th Cir. 2013).

The police encounter in *Black* occurred in North Carolina, where state law permitted open carry of firearms with a permit [4]:

> …it is undisputed that under the laws of North Carolina, which permit its residents to openly carry firearms, see generally N.C. Gen. Stat. §§ 14–415.10 to 14–415.23, Troupe's gun was legally possessed and displayed.

Black, 707 F.3d at 540.

Maryland citizens may carry handguns if they have a permit. *See* Md. Public Safety ("PS") § 5-303 ("A person shall have a permit issued under this subtitle before the person carries, wears, or transports a handgun.") Unlike North Carolina, Maryland only allows **concealed** carry of handguns:

> (b)(1) Subject to subsection (c) of this section, a permit issued under this subtitle shall restrict the wearing, carrying, and transporting of a handgun by the person to whom the permit is issued to wearing, carrying, or transporting a handgun concealed from view:
>
> (i) under or within an article of the person's clothing; or
>
> (ii) within an enclosed case.

PS § 5-307

As such, both the Appellant in our case and the person searched in *Black* were carrying a handgun in a manner that was not obviously illegal. Open carry in North Carolina, and concealed carry in Maryland, were both legally available to people with permits. Even though it is illegal for a felon to possess a handgun, *Black* makes clear that carrying a handgun, on its own, does not justify a *Terry* stop on suspicion of illegal firearm possession:

[4] When *Black* was decided, North Carolina law required permits to carry handguns. This has since been repealed. *See* N.C. Gen. Stat. Ann. § 14-402, *et seq* (Repealed by S.L. 2023-8, § 2(a), eff. March 29, 2023).

> The Government contends that because other laws prevent convicted felons from possessing guns, the officers could not know whether Troupe was lawfully in possession of the gun until they performed a records check. Additionally, the Government avers it would be "foolhardy" for the officers to "go about their business while allowing a stranger in their midst to possess a firearm." We are not persuaded.
>
> Being a felon in possession of a firearm is not the default status. More importantly, where a state permits individuals to openly carry firearms, the exercise of this right, without more, cannot justify an investigatory detention."

Black at 540.

It is undisputed that Appellant was a felon who could not lawfully possess a handgun under PS § 5-307. However, the officer had no way of knowing Appellant's criminal history merely from observing him carry a concealed weapon. As in *Black*, the officers could not know whether Appellant was lawfully in possession of a gun until they performed a records check.

If carrying a handgun was, on its own, reasonable justification for a *Terry* stop, any Maryland citizen lawfully carrying a concealed weapon would, by default, be subject to police stops. This cannot be. "Permitting such a justification would eviscerate Fourth Amendment protections for lawfully armed individuals" in Maryland. *Id.*

Other Evidence Establishing Reasonable Suspicion

Though carrying a handgun on its own does not establish reasonable suspicion for a *Terry* stop, carrying a handgun may be considered alongside other facts to determine whether the stop was justified under the totality of the circumstances. We therefore examine the other facts which, taken together, may have established sufficient reasonable suspicion for the *Terry* stop.

The trial judge's ruling on the record at the motions hearing, and the State's filings each identify several additional facts which justified the stop. We summarize these various facts into three categories. First are the officer's observations that Appellant appeared to adjust a weapon in one's waistband. Second is that the encounter occurred in a "high crime area." Third is that Appellant attempted to flee after noticing the police.

Adjusting Object in Waistband

At the motions hearing, the officer testified that he became suspicious after seeing Appellant "pull his pants up, and after pulling his pants up, he took his right hand, grabbed a handle of which [sic] appeared to be a firearm through the hoodie and adjusted it on his back right side." Adjusting a weapon in waist band can give rise to reasonable suspicion that the person is attempting to conceal an illegally possessed weapon from a police officer's view:

> The key to linking any potentially suspicious factor—whether it be a bulge or a waistband adjustment—to the possibility of criminal activity by a suspect lies in the hands of the officer who made the *Terry* stop. Conclusory statements by the officer that what he saw made him think the defendant had a weapon do not satisfy the State's burden of articulating reasonable suspicion that the suspect was involved in criminal activity.

In re Jeremy P., 197 Md. App. 1, 19-20 (2011).

The officer's testimony offers a mere conclusory statement that he observed a weapon. Though the officer explains a variety of ways he observed that the Appellant was carrying a handgun, he never went on to elaborate how those observations made him suspicious that the Appellant was involved in criminal activity.

For example, the officer did not testify that Appellant attempted to conceal the gun for fear of police observation. To the contrary, the officer's testimony makes clear that Appellant was unaware that he was being observed and "appeared to have, like, his headphones in and just be walking." If Appellant didn't know an officer was watching him, adjusting his weapon cannot evidence an attempt to conceal an illegally held item from police scrutiny.

Put briefly, the officer's observations are merely evidence that Appellant was carrying a concealed weapon, which as we previously discussed is not sufficient to establish reasonable suspicion that a person is involved in any criminal activity.

High Crime Area

An officer cannot reasonably suspect a person of a crime merely because they are in a high crime area, but presence in a high crime area is an individual factor that "may contribute to the reasonable suspicion calculus." *Sizer v. State*, 456 Md. 350, 336 (2017).

The officer testified that the arrest occurred in a "heavy drug sales area of mainly marijuana," and that there had been "some violence in that area as well as shootings and stuff."

The Supreme Court of Maryland has outlined what officers must prove when claiming the area's high crime gave rise to their reasonable suspicion:

> In our view, the reasonable suspicion analysis requires support from specific facts such that testimony concerning a location being a high-crime area must be particularized as to the location or geographic area at issue, the criminal activity known to occur in the area, and the temporal proximity of the criminal activity known to occur in the area to the time of the stop. Testimony must identify a location or geographic area, not an overly broad region, and

> particular criminal activity occurring in the not-too-distant past, to support the conclusion that the location is indeed a high-crime area.

Washington v. State, 482 Md. 395, 443 (2022).

The officer described a relatively confined geographic region and explained that the area was known to have violence and drug sales, and that is why he was stationed in the area to begin with.

However, there was no testimony about knowing when the most recent shooting (or any other crime) occurred in that area, or how frequently shootings happen in the area. He only vaguely described that "some shootings" have occurred there. The officer did not establish the temporal proximity of Appellant's arrest to any criminal activity in the area.

We further note that some of the officer's testimony painted a less dangerous picture of the area where Appellant was arrested. Unlike the case in *Washington*, in this case there is "conflicting evidence regarding the high-crime nature of an area." *Washington v. State*, 482 Md. 395, 444 (2022). The officer testified that from October 2019 to May 2020, he made no street arrests in the area, and made only one arrest based on a warrant. He also described the neighborhood as mostly a commercial area:

> It's more of a, it's a commercial area – that whole block. There may be a few houses on the north side of the street, but when I say a few, maybe like five. Most of it is all businesses, barber shops, corner stores. There's a chicken place, a little grocery store, liquor store. It's all, that 31000 block is basically businesses.

The officer failed to establish a temporal proximity between Appellant's arrest and the criminal activity that made the area high crime. Though the officer competently testified that some crime, at some point, occurred in the area, he also testified that it was a

commercial area where people had ample lawful reasons to be present. Under the totality of the circumstances, Appellant's presence in this area did not give rise to a reasonable suspicion that he was involved in criminal activity.

Attempted Flight

In *Washington*, the Supreme Court of Maryland concluded that "unprovoked flight in a high-crime area does not automatically equal reasonable articulable suspicion for a *Terry* stop." *Washington v. State*, 482 Md. 395, 407 (2022).

Neither the police body camera footage nor the appellate record definitively establishes that the Appellant attempted to flee. The body camera footage shows that Appellant was restrained within seconds of noticing police. The footage shows no obvious attempt at flight in these few moments. Nonetheless, Appellant's brief highlights the officer's testimony at the motions hearing that Appellant "appeared to change the direction of travel because he saw a patrol car stop in the middle of the block," which to the officer indicated that Appellant was attempting to "elude police presence."

We disagree. The body camera footage does not show any attempted flight, nor would an attempted flight be possible in the period between when Appellant encountered the police and when he was restrained. We discuss the lack of evidence that Appellant attempted to flee in greater depth when we consider whether the officers used reasonable force.

The Totality of the Circumstances

Under a totality of the circumstances, the officer could not reasonably suspect a crime was afoot. The officer could only reasonably suspect that Appellant was armed after

adjusting a gun shaped object in his waistband. Carrying a concealed weapon is not, on its own, reasonable suspicion to initiate a stop. The officer could not reasonably suspect that Appellant was attempting to conceal the gun from him, because the Appellant was not aware the officer was watching him. The officer's testimony does not establish that the arrest occurred in a high crime area. The body camera footage does not show any attempted flight. As result, we find that the officer had no reasonable suspicion to initiate a *Terry* stop.

II. Unreasonable Force

A. Parties' Contentions

Evans' second issue on appeal asserts that Ofc. Meiler used an unreasonable amount of force to "effectuate the stop." He argues that the "use of force against Mr. Evans changed what could have been a lawful investigative *Terry* stop and *Terry* frisk into a de facto arrest for which he lacked probable cause." Based on Maryland jurisprudence, Evans contends that the hard takedown in this case was not justified to "protect officer safety or to prevent a suspect's flight." Evans asks this Court to reverse the decision of the circuit court and grant the motion to suppress.

In response, the State asks us to affirm the judgment of the circuit court. The State argues that Ofc. Meiler "used a reasonable level of force in light of his belief that Evans was attempting to flee." Furthermore, the State posits that Maryland caselaw supports the use of force in the context of this *Terry* stop. The State asks this Court to affirm the judgment of the circuit court.

A. Analysis

The Supreme Court of Maryland has defined arrest as "the taking, seizing, or detaining of the person of another (1) by touching or putting hands on him; (2) or by any act that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest…" *Elliott v. State*, 417 Md. 413, 428-29 (2010) (quoting *Bouldin v. State*, 276 Md. 511, 515-16 (1976)). "Generally, a display of force by a police officer, such as putting a person in handcuffs, is considered an arrest." *Longshore v. State*, 399 Md. 486, 502 (2007). However, there are "certain limited circumstances when the use of force will be considered reasonable as part of an investigative detention: where the use of force is used to protect officer safety or to prevent a suspect's flight." *Elliott*, 417 Md. at 429 (citations omitted). "The burden is on the State" to justify the officer's use of force under one of these circumstances. *Id.*

The Supreme Court of Maryland has considered various cases dealing with a hard takedown of a suspect in the context of a *Terry* stop. The parties have diverging views on the import of these cases. In *In re David S.*, the Supreme Court of Maryland considered the question of "whether the seizure of David S. was tantamount to an arrest requiring probable cause." 367 Md. 523, 528 (2002). In that case, officers saw a juvenile "engage in what appeared to be a burglary, and he saw respondent place a dark object, which looked like a handgun, in the front of his waistband." *Id.* at 539. The Court proceeded to uphold the arrest and reasoned that:

> We hold that the stop was a legitimate *Terry* stop, not tantamount to an arrest. Several police officers conducted a "hard take down" of respondent. *See Lee*, 311 Md. 642, 537 A.2d 235. The officers, with their weapons drawn, forced respondent to the ground and placed him in handcuffs. This conduct was not unreasonable because the officers reasonably could have suspected that

> respondent posed a threat to their safety. Considering the totality of the circumstances, as they appeared to the officers at the time, in order to maintain their safety, handcuffing respondent and placing him on the ground for a brief time was reasonable and did not convert the investigatory stop into an arrest under the Fourth Amendment. Although this is a severe form of intrusion, we conclude that under the circumstances, it was reasonable.

In re David S., 367 Md. at 539-40.

In *Lee*, the Supreme Court of Maryland dealt with an earlier case of a "hard take down." *Lee v. State*, 311 Md. 642, 661 (1988). In that case, officers ordered the suspects to lie on the ground and pointed weapons at them. *Id.* at 651. Officers in *Lee* suspected the petitioners of an earlier robbery, attempted murder, and carrying a concealed weapon when officers ordered them to the ground. *Id.* at 661. The Court ultimately held that the "forceful detention of the suspects was constitutionally justified by reasonable suspicion under the circumstances." *Id.* at 667.

In 1980, the Supreme Court of Maryland dealt with a case where police conducted a hard take down of a fleeing suspect. *Watkins v. State*, 288 Md. 597, 599 (1980). The Court reasoned that the officer had reasonable suspicion that criminal activity was afoot given the facts that another police officer had been "pursuing two suspects reported to be armed" in the same area, Watkins fled when he saw the officer, and refused to stop after several warnings from the officer. *Id.* at 604. As to the use of the force, the Court held that "the use of reasonable force to effectuate an investigative detention of a suspect is not an impermissible seizure under the fourth amendment to the United States Constitution." *Id.* at 610.

Evans contends that these cases are distinguishable from the instant case because "the circumstances which allow a hard takedown as part of an investigative *Terry* stop were not present in Mr. Evans' case." However, the State posits that the decision in *Watkins* is directly on point. We agree with Evans that the facts in *Lee* and *In re David S.* are distinguishable given that in those cases officers had credible information that the suspects were involved in other dangerous crimes. Furthermore, the suspects in those cases were apprehended without even a hint of flight.

However, as noted above, the only time that use of force is warranted in the context of an investigative detention is to "protect officer safety or to prevent a suspect's flight." *Elliott*, 417 Md. at 429 (citations omitted). "The burden is on the State" to justify the officer's use of force under one of these circumstances. *Id.* Ofc. Meiler did not testify directly that he took Evans to the ground to protect officer safety and the circuit court did not focus on officer safety in its ruling. Ofc. Meiler's use of force was not justified to protect officer safety.

Next, we turn to the convoluted question of whether the use of force was warranted in this case to prevent Evans' flight. As the parties agree, we view the facts in the light most favorable to the State as the prevailing party. *See Grant v. State*, 449 Md. 1, 14-15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)). On appeal, we "will not disturb the [circuit] court's factual findings unless they are clearly erroneous." *Id.* The circuit court found that "[t]he officer thought he was running off which he may or may not

have been." The circuit court did not conclusively find that Evans did flee from officers but did conclude that Ofc. Meiler held the subjective belief that Evans was fleeing.[5]

At the suppression hearing, the State displayed Ofc. Meiler's body-worn camera footage as State's Exhibit 1. *See Appendix*, Screenshots of Ofc. Meiler's Body-Worn Camera. The circuit court had the benefit of viewing the footage alongside of Ofc. Meiler's testimony about what was unfolding on camera. We will note that an independent viewing of the footage is fraught with ambiguity. One potential explanation is exactly as Ofc. Meiler testified. Specifically, that Evans could have changed direction to walk behind the moving police cruiser and abscond. Another explanation is as the defense contends, that Evans was simply traveling and went to cross the street given that a pickup truck was partially blocking his initial lane of travel. It does not appear that Evans changed his rate of speed or necessarily was even aware of Ofc. Meiler tailing him. Ofc. Meiler did not communicate with Evans at all prior to the takedown. Further adding support to Evans' explanation is the fact that when he changes direction, Evans steps toward the second police cruiser.

On appeal, although we view the facts in the light most favorable to the State and defer to the circuit court's factual findings, we still must hold the State to their burden to justify the use of force. The circuit court did not affirmatively find that the State justified the use of force because Evans was fleeing. Instead, the suppression court merely recounted

[5] Ofc. Meiler testified that "[i]t appeared that [Evans] was going to take off and run." In response, the officer was "grabbing him and trying, stopping him from running." Ofc. Meiler continued that as a police cruiser entered Evans's vision, "he changed direction of travel because he saw the patrol car stop in the middle of the block. So at that point, he was trying to change direction and try to, appear to me elude police presence."

the facts and evidence before it, that Ofc. Meiler thought that Evans was going to flee. The State did not conclusively prove that Evans was fleeing to justify the hard takedown of Evans in this case. Because the State did not meet its burden to justify the use of force, we must reverse the decision of the circuit court as to the motion to suppress. We hold that the use of force in this case transformed this encounter into an arrest without the necessary probable cause. Therefore, because this arrest was unreasonable and in contravention of the Fourth Amendment, we are compelled to exclude the gun, the magazine, the ammunition, and Evans' statement.

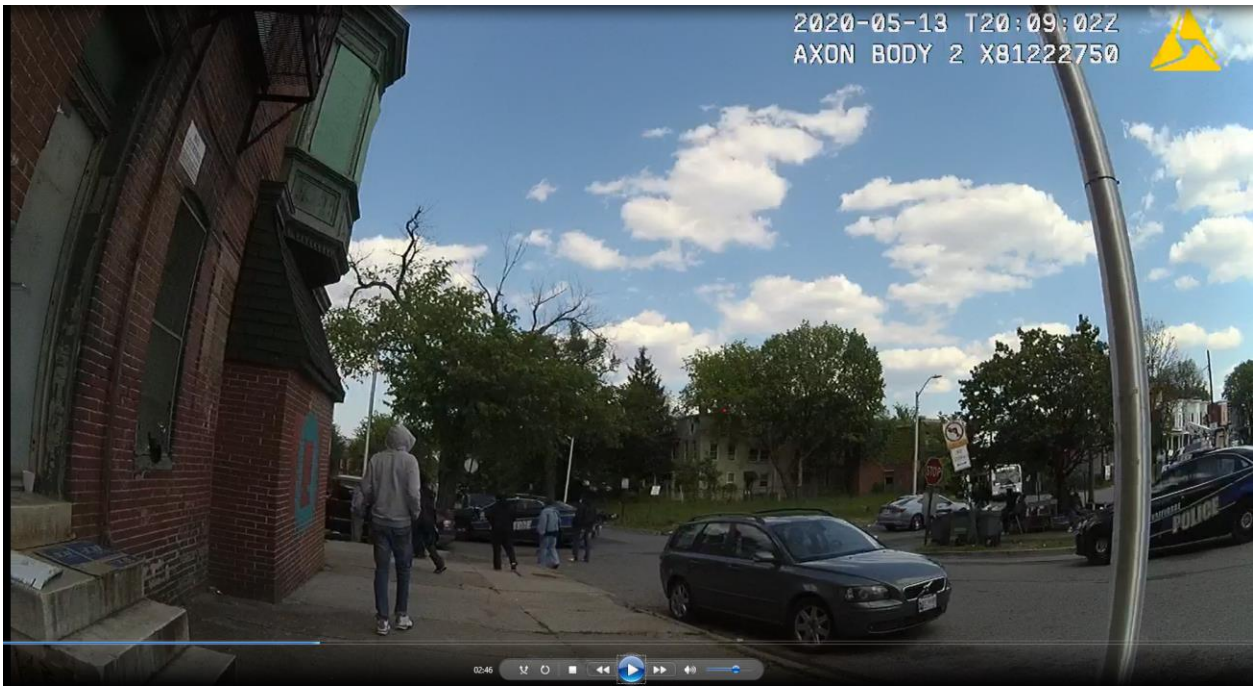
CONCLUSION

We conclude that the circuit court erred in denying the motion to suppress because the level of force used was unreasonable. Accordingly, we reverse the judgment of the Circuit Court for Baltimore City and remand the case to that court to grant the motion to suppress.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY TO GRANT THE MOTION TO SUPPRESS. COSTS TO BE PAID BY THE CITY COUNCIL OF BALTIMORE.

Appendix

Screenshots of Officer Meiler's Body-Worn Camera Footage

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